IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Writ Petition No. 1786 of 2005.

Shyam Constructions.

Petitioner.

Versus.

Union of India. **..Respondent.**

Mr. U. S. Samudrala for the petitioner.

Mr. Sureshkumar for respondent.

CORAM :H.L.GOKHALE &
S.R.DONGAONKAR.JJ.
DATE :19/04/2006.

P.C.

. Heard Mr. Samudrala in support of this petition. Mr. Sureshkumar appears for respondent. The petition is filed to seek the refund of earnest money deposit of Rs.50,000/- paid by the petitioner to the respondent. The respondent had floated a tender and in pursuance thereof the petitioner gave the offer. The work was to be performed in three parts, Schedule A, B and C and the total work was of over one crore and earnest money deposit of Rs.50,000/- was required. The petitioner has deposited that amount and were found successful bidder and letter of acceptance was sent on 14.2.2005. The petitioner, however, declined to perform the contract and has contended that the acceptance was communicated late.

2] The respondents have forfeited this earnest amount of Rs. 50,000/- and,therefore, this petition has been filed to recover that amount. Mr. Samudrala, learned counsel for the petitioner submits that communication was sent on the last date for acceptance i.e. on 120th day as per the terms of contract. He submits that this being the position, prayer (a) of the petition is to treat the acceptance letter as void and prayer (c-1) is to direct the refund of the earnest money deposit.

3] Mr.Sureshkumar appearing for the respondent, on the other hand, points out that this is a matter raising a dispute about a contract. It is a contractual dispute and as held by the Apex Court in the case of National Highway Authority of India Vs. M/s. Ganga Enterprises and another reported in A.I.R. 2003 Supreme Court 3823 the dispute should be taken to a civil court and Writ Court is not the proper forum. The Court has upheld the necessity of the forfeiture clause to ensure that only genuine parties give their bid.

4] That apart he submits that the acceptance of the contract is complete when the communication of the acceptance is put in the course of transmission to the proposer so as to be out of the power of acceptor. Communication has been sent within the period provided for acceptance, may be on the last date. He relies upon Section 4 of the Contract Act. He points out that same has been interpreted by the Apex Court in the case of Bhagwandas Goverdhandas Kedia Vs. M/s. Girdharilal Parshottamdas and Co.and others reported in A.I.R.1966 Supreme Court 543. He draws our attention to paragraph no. 7 and 8 to the effect that if the parties are not in the presence of each other, and the offeror has not prescribed a mode of communication of acceptance, the contract made by letters sent by post is valid and once it is put in transmission and out of power of acceptor, the communication of acceptance is complete. The Section as well as the interpretation thereof is clear. In view of this legal position we cannot find any fault with respondent's decision, though that will be a matter to be gone into if the petitioner chooses to file a suit.

5] Petition is dismissed. We, however,

clarify that it will be open to the petitioner to file a suit, if he so desires.

(H.L.GOKHALE,J.)

(S.R.DONGAONKAR.J.)